

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-1789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation of
Bernard L. Madoff Investment Securities LLC

Plaintiff,

v.

TRUST U/ART FOURTH O/W/O ISRAEL
WILENITZ,

EVELYN BEREZIN WILENITZ, individually, and as
Trustee and Beneficiary of the Trust U/ART Fourth
O/W/O Israel Wilenitz, and

SARA SEIMS, as Trustee of the Trust U/ART Fourth
O/W/O Israel Wilenitz,

Defendants.

Adv. Pro. No. 10-04995 (SMB)

**PROPOSED ORDER GRANTING DEFENDANTS' MOTION TO COMPEL
DISCOVERY PURSUANT TO FED. R. CIV. P. 37, FINDING PLENARY WAIVER OF
PRIVILEGE AND WORK PRODUCT, AND BARRING THE TRUSTEE FROM USING
AT THE TIME OF TRIAL DOCUMENTS NOT PRODUCED DURING FACT
DISCOVERY**

THIS MATTER having come before the Court on the request of Chaitman LLP, counsel
for Trust U/Art Fourth O/W/O Israel Wilenitz, Evelyn Berezin Wilenitz, individually, and as

Trustee and Beneficiary of the Trust U/ART Fourth O/W/O Israel Wilenitz, and Sara Seims, as Trustee of the Trust U/ART Fourth O/W/O Israel Wilenitz (“Defendants”), with respect to the Defendants’ Motion (a) to compel discovery pursuant to Fed. R. Civ. P. 37, (b) for an order finding plenary waiver of privilege and work product, and (c) for an order barring the trustee from using at trial any evidence not produced during fact discovery; and the Court having reviewed all pleadings and other papers filed and submitted in connection with the motion; and good and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. Defendants’ motion to compel discovery pursuant to Fed. R. 37 is granted and the Trustee must fully respond to Defendants’ Discovery Requests within fourteen (14) days of the entry of this Order;
2. The Trustee, by his failure to produce a privilege log, has caused a plenary waiver of attorney-client privilege, attorney work product, and all other claimed privileges and must produce all documents being withheld on these grounds within fourteen (14) days of the entry of this Order;
3. The Trustee is barred from using at trial any information or documents not produced during fact discovery.

New York, New York
Dated:

Hon. Stuart M. Bernstein
United States Bankruptcy Judge